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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re R.D., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

R.D.,

Defendant and Appellant.

E066811

(Super.Ct.No. RIJ1501104)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Walter H. Kubelun,
Judge. Affirmed.

Laurel Ellis Parker Simmons, under appointment by the Court of Appeal, for
Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, and A. Natasha Cortina and
Amanda E. Casillas, Deputy Attorneys General, for Plaintiff and Respondent.

After defendant and appellant, R.D. (Minor), successfully completed his program of supervision, the juvenile court dismissed the juvenile delinquency petition and ordered his records sealed. Minor's counsel requested the court to additionally seal Minor's middle school records. The court denied the request. On appeal, Minor contends the court erred in refusing to seal his middle school records. We affirm.

I. PROCEDURAL HISTORY

On October 1, 2015, the People alleged, pursuant to a juvenile delinquency petition, that on May 27, 2015, Minor had possessed not more than 28.5 grams of marijuana on school grounds. (Health & Saf. Code, § 11357.) On October 20, 2015, the parties agreed to a program of supervision pursuant to Welfare and Institutions Code section 654¹ in lieu of proceeding on the petition.²

Minor had previously completed a Youth Accountability Team for a similar allegation. Thus, Minor would have been ineligible for a program of supervision unless the court found unusual circumstances. (§ 654.3.) The court found unusual circumstances in that Minor was young and had been doing well in school. The court granted minor informal probation under a program of supervision for a period of six

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Typically, a program of supervision would be agreed to prior to and in lieu of the filing of a juvenile delinquency petition. (§ 654.)

months.³ Minor's counsel noted for the record that Minor was attending "the Riverside County Education Academy, in the 9th grade."

On April 14, 2016, the probation officer filed a review memorandum. The probation officer categorized Minor's behavior as, "Fair/Some Behavioral Problems"; Minor's compliance with the terms of his supervision was "marginal." During a portion of Minor's supervision, he had attended Moreno Valley Regional Learning Center; Minor had incurred 27 period tardies and 13 full day trancies. The school dismissed Minor on March 2, 2016, for noncompliance on multiple occasions.

Minor tested positive for marijuana on November 20, 2015, December 22, 2015, February 5, 2016, and April 13, 2016. He had negative drug tests on March 1, 15, and 30, 2016.⁴ Minor was now attending Bayside Community Day School where his behavior and school performance had improved greatly. The probation officer recommended that Minor's conditions of supervision remain in effect for an additional three months. The court ordered three months of additional supervision.

On July 14, 2016, the probation officer filed an additional review memorandum. He listed Minor's behavior as "Excellent." Minor had tested negative for controlled substances on four occasions. The probation officer recommended that the juvenile delinquency petition be dismissed and that the court order Minor's records at the

³ Minor signed an informal probation contract with various terms and conditions, including that he obey all laws and attend school regularly.

⁴ Contradictorily, the probation officer wrote that Minor "made the poor decision to use marijuana on March 30, 2016"

Department of Justice, the Riverside County Superior Court, the Riverside County Probation Office, and the Riverside County District Attorney's Office be sealed.

On July 19, 2016, the juvenile court dismissed the petition and ordered Minor's records at the Department of Justice, the Riverside County Superior Court, the Riverside County Probation Office, the Riverside County Sheriff's Office, and the Riverside County District Attorney's Office be sealed. Minor's counsel orally moved that the court seal Minor's middle school records.

The court responded that it "doesn't seal school records at this point in time. There are some motions pending regarding that. But I believe, if anything, it's discretionary with the Court. And at this point in time, the Court does not see that. So I will seal the records that are set forth in the motion that was provided."

The People noted in their opposition to Minor's request: "There are those pending motions. I'm not sure what the Court's inclination is." The court responded: "Correct. I'm not sealing the school records."

II. DISCUSSION

Minor contends that because the Riverside County Education Academy is a public agency and the sealing of that school's records would benefit Minor, the juvenile court erred in summarily denying his request. We disagree.

"If a person who has been alleged or found to be a ward of the juvenile court satisfactorily completes (1) an informal program of supervision pursuant to Section 654.2, (2) probation under Section 725, or (3) a term of probation for any offense, the

court shall order the petition dismissed. The court shall order sealed all records pertaining to the dismissed petition in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice.” (§ 786, subd. (a).)

“An individual who has a record that is eligible to be sealed under this section may ask the court to order the sealing of a record pertaining to the case that is in the custody of a public agency other than a law enforcement agency, the probation department, or the Department of Justice, and the court may grant the request and order that the public agency record be sealed if the court determines that sealing the additional record will promote the successful reentry and rehabilitation of the individual.” (§ 786, subd. (e)(2).)

“Under ‘well-settled principle[s] of statutory construction,’ we ‘ordinarily’ construe the word ‘may’ as permissive and the word ‘shall’ as mandatory, ‘particularly’ when a single statute uses both terms. [Citation.] In other words, ‘[w]hen the Legislature has, as here, used both “shall” and “may” in close proximity in a particular context, we may fairly infer the Legislature intended mandatory and discretionary meanings, respectively.’ [Citation.]” (*Tarrant Bell Property, LLC v. Superior Court* (2011) 51 Cal.4th 538, 542.) A denial of a motion for permissive intervention is reviewed for an abuse of discretion. (*Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1199.) Thus, “a reviewing court will disturb the trial court’s decision . . . if, under all the circumstances, that choice is arbitrary and capricious and is wholly unreasonable. [Citation.]” (*People v. Moran* (2016) 1 Cal.5th 398, 403.) “Generally, the moving party

bears the burden to put the supporting evidence before the court.” (*People v. Ochoa* (2016) 248 Cal.App.4th 15, 29, fn. 3.)

First, as the People note, education records, including student disciplinary records, are already protected from disclosure under state and federal laws. (*Rim of the World Unified School Dist. v. Superior Court* (2002) 104 Cal.App.4th 1393, 1396-1399; 20 U.S.C § 1232g.) Thus, it is unclear why a court ordered sealing those records would be necessary. Second, the Riverside County Education Academy was Minor’s school for a portion of his ninth grade school year (high school), not his middle school. The incident which prompted the filing of the juvenile delinquency petition occurred on May 27, 2015, when, presumably, Minor was in middle school at some other school. We do not know in which school Minor was in attendance at that time because Minor’s counsel failed to carry the burden of providing evidence supporting the request to seal those records. Moreover, Minor failed to demonstrate why there would be a need to seal his high school records which would, inferentially, not contain any information regarding the incident.

Third, even assuming the information regarding the incident from Minor’s middle school was transferred to the Riverside County Education Academy, Minor was no longer in attendance there. In fact, Minor had since transferred to two additional schools. There is no evidence in the record that the information regarding the incident from Minor’s middle school was transferred to three different schools. Fourth, Minor failed in his burden of showing any need for sealing his current school’s records even if the information regarding the incident somehow did manage to transfer. Indeed, as the

People suggest, it could be beneficial for the school to have such information for the purpose of helping to rehabilitate and educate Minor. Finally, both the People and the court below noted that additional motions regarding the sealing of records were pending. Neither those motions nor the court's rulings on them are part of the record on appeal. Thus, it is possible the court already sealed Minor's school records. The court acted within its discretion in denying Minor's request to seal his middle school records.

III. DISPOSITION

The judgment is affirmed.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

FIELDS
J.